

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	
Opportunities of Spectrum Through Incentive)	GN Docket No. 12-268
Auctions)	
)	

PETITION FOR RECONSIDERATION

Journal Broadcast Corporation, licensee of Television Station KGUN-TV, Tucson, Arizona (“KGUN”), by its attorneys, pursuant to Section 1.429 of the Commission’s Rules, hereby respectfully requests reconsideration of one aspect of the Report and Order issued in the above-captioned proceeding in which the Commission adopted rules to implement the broadcast television spectrum incentive auction.¹ In an effort to mitigate reception problems that KGUN, which operates on VHF Channel 9, experienced following the digital transition, Journal filed a minor modification application in September 2009 requesting authority to increase KGUN’s operating power (File No. BMPCDT-20090918ABY). Processing of this application was delayed due to factors beyond Journal’s control. As a result, the application is now subject to the processing freeze the FCC issued on April 5, 2013 in preparation for the incentive auction.²

The sole purpose of the KGUN modification application is to enhance the station’s service so that it can serve viewers who are unable to receive the station’s over-the-air post-transition VHF signal. Grant of the application would result in a small increase in the KGUN

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014) (“*Report and Order*”).

² See FCC Public Notice, *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications*, 28 FCC Rcd 4364 (MB 2013) (“Freeze Notice”).

noise-limited signal contour, and therefore cannot be amended to comply with the filing limitations set forth in the Freeze Notice. For the reasons set forth below, Journal requests that the Commission's conclusion in the *Report and Order* – that facilities modification applications that were on file but not granted by April 5, 2013, and that were not amended to comply with the filing limitations set forth in the Freeze Notice, that are constructed and licensed prior to the Pre-Auction Licensing Deadline will not be protected in the repacking process³ – not be applied to the KGUN modification application. For the reasons set forth below, Journal submits that failure to protect KGUN's modified facilities during repacking would be inequitable and contrary to the public interest.

I. Background

KGUN is an ABC affiliate that currently broadcasts on digital channel 9. On June 12, 2009, the Station transitioned its digital operations from its pre-transition UHF Channel 35 to its post-transition digital facilities on VHF Channel 9. Like other stations operating with post-transition VHF channels, following the digital transition KGUN received complaints from thousands of viewers who could no longer receive the station over the air.

Journal took several actions in an effort to resolve these VHF reception issues. For example, Journal accelerated its efforts to initiate digital operation of TV translator K16EO, which rebroadcasts KGUN. Journal filed a digital flash cut application for K16EO (File No. BDFCDTT-20090624AEA). That application remains pending. To enable Journal to initiate digital service on the translator as quickly as possible, Journal filed an STA requesting authority to begin digital operation on K16EO in accordance with the parameters specified in the application. The STA was granted on July 20, 2009 and has been extended. The last extension

³ *Report And Order* at 6662 (¶ 212)

request, which remains pending, was filed on January 10, 2011 (see Attachment A). The operation of digital service on the translator did alleviate, to some extent, the VHF reception problems. However, because of the secondary nature of the translator, Journal sought to provide improved coverage with its main station facilities and filed the minor modification application requesting authority to increase KGUN's authorized power.

Processing of the modification application was delayed for two reasons that were beyond Journal's control. First, the application was determined to be mutually exclusive with a Petition for Rulemaking filed by KM Television Flagstaff, L.L.C. ("KM Television") for Station KCFG(TV), Flagstaff, AZ (BPRM-20080620AOF). By letter dated October 25, 2011, the Media Bureau provided Journal and KM with 90 days to resolve the mutual exclusivity. The parties initiated discussions promptly and jointly requested extension of the 90 days to resolve the interference. The parties executed an Interference Acceptance Agreement on March 13, 2012. On March 20, 2012, Journal filed an amendment to the KGUN modification application to change the requested maximum effective radiated power to 36.5 kW, and included a copy of the Interference Acceptance Agreement. Second, the application required concurrence from Mexico because of the proximity of Tucson to the Mexican border. Journal's consulting engineer was recently informed by the International Bureau that Mexican concurrence was received on July 3, 2013. At that point, however, the application could not be granted because it was subject to the Freeze Notice. Thus, although the KGUN modification application was filed within months of the digital transition to address the station's VHF reception problems, which have been widely documented, the application is now subject to the Freeze Notice imposed several years later.

In the *Report and Order*, the Commission stated that it will direct the Media Bureau to begin processing modification applications that were pending prior to the freeze and were not

amended to comply with the limitations set forth in the Freeze Notice, but that facilities proposed in such applications, even if authorized and licensed prior to the Pre-Auction Licensing Deadline, will not be protected in the repacking process.⁴

II. Failure To Protect The KGUN Modified Facilities In The Repacking Process Would Be Contrary To The Public Interest and Inequitable

Journal respectfully requests reconsideration of the *Report and Order* to ensure that the KGUN modification application is processed expeditiously so that the requested modified facilities can be constructed and licensed prior to the Pre-Auction Licensing Deadline, and to ensure that these facilities will be protected during the repacking process. To penalize KGUN by forcing it to accept inferior facilities from which it is unable to provide service to all of the viewers the station served prior to the digital transition – simply because Mexican concurrence of the proposed maximized facilities was not obtained until after the freeze went into effect – would be contrary to the public interest and inequitable.

Reception issues experienced by digital stations operating on VHF channels have been widely acknowledged by the Commission. In the National Broadband Plan issued in 2010 to set the stage for the Incentive Auction, the Commission stated as a goal that: “The FCC should pursue additional options to address VHF reception issues, such as increased power limits or adoption of enhanced antenna and receiver standards Since the transition to digital, many VHF stations have reported that some over-the-air viewers have experienced degraded reception due to the impact of environmental radio frequency noise on their digital signal.”⁵

⁴ *Id.*

⁵ *Connecting America: The National Broadband Plan*, 50 CR 1, Chapter 5 and n. 122 (2010). *See also Amendment of Section 73.622(i), Final DTV Table of Allotments, Birmingham, Alabama, Report and Order*, 25 FCC Rcd 1970 (MB 2010) (concluding that substitution of UHF digital channel for VHF digital channel would further the public interest by eliminating reception problems associated with digital broadcasting on VHF channel).

In the *Report and Order*, in discussing the option for stations to bid in the reverse auction by offering to move from a UHF to a VHF channel to make available their UHF spectrum for the forward auction, the Commission emphasized again that stations operating digital facilities on VHF channels frequently experience reception issues. The Commission adopted a proposal “to afford favorable consideration to post-incentive auction requests for waivers of the VHF power and height limits for winning UHF-to-VHF bidders that *may be necessary to resolve coverage problems on their new channels*,” and noted that it had granted similar waivers following the DTV transition to help stations operating on post-transition VHF channels resolve reception issues.⁶

In this case, Journal is not requesting any type of waiver of the permissible power and height limits, but is merely asking that the maximized facilities KGUN promptly requested post-transition be protected during repacking so that the station’s ability to serve its viewers is not compromised. During and following the digital transition, the Commission repeatedly acknowledged that television broadcasters would have the opportunity to maximize their facilities to permit them to replicate the areas to which they provided service with their analog facilities.⁷ Failure to protect the KGUN modified facilities during repacking would be particularly inequitable because the service improvements KGUN has been able to implement by providing digital services on translator Station K16EO, which are only authorized on a temporary basis, will not be protected during repacking.⁸ Without protection during repacking of

⁶ *Report and Order* at 6726 (¶ 371 and n. 1101) (emphasis added).

⁷ See, e.g., *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279, 18311 (2004).

⁸ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6676-77 (2014).

the maximized facilities proposed in the modification application or the K16EO digital facilities, KGUN would be unfairly prevented from providing numerous over-the-air viewers in the Tucson market with ABC programming, local news and other highly-acclaimed local programming. This result would be inconsistent with the public interest and the Commission's longstanding goal to preserve reception to over-the-air television households.

III. Protection Of The Modified KGUN Facilities Should Not Limit The Commission's Repacking Flexibility

The Commission's justification for its decision not to protect in the repacking process facilities authorized in applications that were not amended to comply with the Freeze Notice filing limitations is that the applications have the potential to constrain the Commission's repacking flexibility and to destabilize its database. For the reasons discussed above, the equities of permitting KGUN to preserve its pre-transition service should outweigh any impact the modified KGUN facilities would have on repacking flexibility, particularly given that the delays in processing the application were outside Journal's control.⁹ In any case, it is unlikely that protecting the KGUN modified facilities on VHF Channel 9 will impact the Commission's repacking flexibility in the Tucson market. In a recent decision issuing a Notice of Proposed Rulemaking for the substitution of VHF Channel 11 for Channel 21 for Station WPXS(TV), Mount Vernon, Illinois, the Bureau observed that the substitution of a VHF channel would not impact its repacking flexibility.¹⁰ The Engineering Statement attached hereto as Attachment B

⁹ In the *Report and Order*, the Commission explained that it granted a waiver of the Freeze Notice for a modification application filed by Station KERA-TV, Dallas, Texas to move to a new tower site, and would protect the modified facilities in the repacking if licensed by the Pre-Auction Licensing Deadline because the equities in favor of preservation outweighed the impact on repacking flexibility. See *Report and Order* at 6662 n. 675.

¹⁰ *Amendment of Section 73.622(i) Post-Transition Table of DTV Allotments*, Mount Vernon, Illinois, MB Docket No. 14-139 (MB Sept. 4, 2014). See also *Report and Order* at 6656 n. 649.

demonstrates that protection of the proposed KGUN modified facilities “should have absolutely no preclusive impact on the repacking process.” KGUN’s consulting engineer reviewed all full power and Class A stations located within 273.6 kilometers of the KGUN transmitter site to determine whether it would be feasible for any of these stations to voluntarily seek to move to Channel 9 and provide the requisite protection to KGUN’s existing facilities. This review concluded that such a move would not be feasible.

IV. Conclusion

For the reasons set forth herein, Journal respectfully requests that the Commission not apply its conclusion – that facilities proposed in pending modification applications that do not comply with the filing limitations set forth in the Freeze Notice that are constructed and licensed prior to the Auction deadline will not be protected during repacking – to the pending KGUN modification application.

Respectfully submitted,

JOURNAL BROADCAST CORPORATION

By: _____/s/
Sally A. Buckman
Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006
(202) 429-8970

September 15, 2014

Its Attorneys

ATTACHMENT A

RETURN COPY



US BANK/FCC JAN 11 2011

WASHINGTON, DC

January 10, 2011

JOHN W. BAGWELL
(202) 416-6767E-MAIL
JBAGWELL@LSL-LAW.COM

Federal Communications Commission
c/o U.S. Bank - Government Lockbox #979089
SL-MO-C2-GL
1005 Convention Plaza
St. Louis, MO 63101

Re: K16EO, Fac. ID No. 36915, Oro Valley/Tucson, Arizona
Request to Extend STA; BLSTA-20090710AGS/BELSTA-20100709AKM

Dear Sir or Madam:

Journal Broadcast Corporation ("Journal"), licensee of translator station K16EO, Oro Valley/Tucson, Arizona (Fac. ID No. 36915), hereby requests an extension of its existing special temporary authority ("STA"), BLSTA-20090710AGS, permitting it to operate in digital mode while its flash cut application remains pending. *See* BDFCDTT-20090624AEA. The STA was last extended on July 14, 2010. *See* BELSTA-20100709AKM.

K16EO operates as a translator, rebroadcasting the signal of station KGUN-TV, Tucson, Arizona (Fac. ID No. 36918), which is also licensed to Journal. KGUN-TV broadcasts ABC network programming on digital channel 9.

On June 12, 2009, KGUN-TV transitioned its digital operations from pre-transition UHF channel 35 to post-transition VHF facilities on channel 9. Following this transition, more than eight hundred viewers from the Tucson metropolitan area contacted the station to report that they were no longer able to receive over-the-air broadcast service of KGUN-TV.

One effort undertaken by Journal to address this situation was to accelerate its effort to initiate digital operation on K16EO by filing a digital flash cut application. Journal also obtained the instant STA allowing it to initiate digital operation on K16EO consistent with the parameters specified in that station's flash cut application while the application remains pending.

K16EO's digital operation has restored over-the-air service of KGUN-TV to some of the Tucson viewers that lost broadcast reception of the station following the digital transition. Grant of this

LSI

Federal Communications Commission
January 10, 2011
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extension request will allow K16EO to continue to provide KGUN-TV's digital service to those viewers, furthering the public interest. As demonstrated in the original STA request and the pending flash cut application, K16EO's proposed operation is not predicted to create prohibited interference to any station in either the United States or Mexico.

The undersigned has been authorized to state that no party to this application is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

Enclosed, please find a Form 159 with credit card payment of the appropriate filing fee. Please date-stamp and return the Return Copy of this STA extension request.

Should there be any questions concerning this matter, please contact the undersigned.

Respectfully submitted,



John W. Bagwell

Counsel for Journal Broadcast Corporation

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE
FORM 159

Approved by OMB
3060-0589
Page No. 1 of 1

(1) LOCKBOX # 979089		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(3) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) John W. Baqwell		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$170.00	
(4) STREET ADDRESS LINE NO. 1 c/o Lerman Senter PLLC			
(5) STREET ADDRESS LINE NO. 2 2000 K Street Street, N.W., Suite 600			
(6) CITY Washington		(7) STATE DC	(8) ZIP CODE 20006
(9) DAYTIME TELEPHONE NUMBER (include area code) (202) 429-8970		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0004054797		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME Journal Broadcast Corporation			
(14) STREET ADDRESS LINE NO. 1 3355 S. Valley View Blvd.			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY Las Vegas		(17) STATE NV	(18) ZIP CODE 89102
(19) DAYTIME TELEPHONE NUMBER (include area code) 414-224-2057		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0002710192		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID K16E0	(24A) PAYMENT TYPE CODE MGL	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$170.00	(27A) TOTAL FEE \$170.00	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, _____, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE _____ DATE _____			
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA <u>X</u> AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____ 0045		EXPIRATION DATE 4/2013	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described. SIGNATURE <i>John W. Baqwell</i> DATE 1/10/11			

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003

ATTACHMENT B

ENGINEERING STATEMENT IN SUPPORT
OF PETITION FOR RECONSIDERATION

GN DOCKET 12-268

Journal Broadcast Corporation
Tucson, AZ

September 5, 2014

Prepared For: Journal Broadcast Corporation
3355 South Valley View Boulevard
Las Vegas, NV 89102

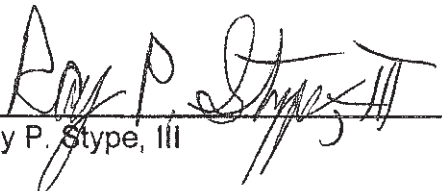
CARL E. SMITH CONSULTING ENGINEERS

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

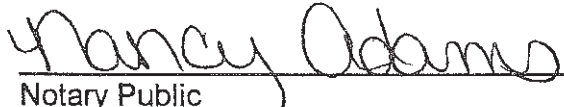
Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by the Journal Broadcast Corporation to prepare the attached "Engineering Statement In Support Of Petition for Reconsideration - GN Docket 12-268".

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **September 5, 2014**.



Notary Public

/SEAL/

Nancy A. Adams, Notary Public
Residence - Cuyahoga County
State Wide Jurisdiction, Ohio
My Commission Expires Sept. 20, 2015

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of the Journal Broadcast Corporation ("Journal"), licensee of Digital TV Station KGUN-TV - Tucson, Arizona. KGUN-TV is presently licensed to operate on TV Channel 9 with a maximum directional effective radiated power of 10.3 kilowatts at 1140 meters above average terrain. On September 18, 2009, Journal filed an application (BMPCDT-20090918ABT) for a construction permit to increase KGUN-TV's maximum effective radiated power to overcome coverage problems which have been experienced by KGUN-TV since the 2009 DTV transition because of KGUN-TV's post-transition digital operation on a VHF channel. This application presently proposes operation with a maximum digital effective radiated power of 36.5 kilowatts utilizing KGUN-TV's presently licensed digital facilities.¹ This proposed power increase will only increase the distance to KGUN-TV's 36 dBu noise limited contour by about 10% when compared to KGUN-TV's presently licensed operating facilities.

This engineering statement supports a petition for reconsideration in GN Docket 12-268 requesting that the facilities specified in this application be protected in the incentive auction repacking process and provides documentation that providing such protection to these maximized facilities should have absolutely no preclusive impact on the repacking process.

A review of all TV broadcast and Class A stations presently authorized to operate from sites located within 273.6 kilometers (the co-channel spacing requirement speci-

¹This application was most recently amended on August 29, 2014 to make a minor correction to the specified site coordinates to match a recent correction of the Antenna Structure Registration (1247688) for the KGUN-TV tower.

fied in Section 73.623(d)(2) of the FCC Rules for VHF DTV stations in Zone 2) of the KGUN-TV transmitter site was conducted to evaluate whether it would be feasible for any of these stations to move to Channel 9 while providing the required protection to KGUN-TV's presently licensed facilities. As shown in Table 1.0, this review found a total of 29 stations (22 digital TV broadcast stations and 7 analog or digital Class A TV stations) within this distance. Thirteen of these stations are located in the Tucson market and operate from transmitter sites located within KGUN-TV's presently licensed noise limited contour, which would make it impossible for them to move to Channel 9 while providing the required protection to KGUN-TV's presently licensed facilities. One of the stations (KFTU-DT) is licensed to Douglas and operates from a transmitter site which is located only 8.3 kilometers outside KGUN-TV's presently licensed noise limited contour, which is much too close to permit operation on Channel 9 while replicating their presently authorized service area and providing the required protection to KGUN-TV's licensed facilities. All of the other stations operate from the South Mountain antenna farm in Phoenix, which is located only about 45 kilometers outside the noise limited contour for KGUN-TV's presently licensed facilities. This location is also too close to KGUN-TV's presently licensed noise limited contour to permit operation by any of these stations on Channel 9 while replicating their presently authorized service area and providing the required protection to KGUN-TV's licensed facilities.

The protection of KGUN-TV's proposed maximized facilities also shouldn't impact the availability of first adjacent channels since the use of these adjacent channels in the Tucson area already appears to be precluded by KAET (Channel 8) and KSAZ-TV (Channel 10) in Phoenix.

Because the presently licensed operation of KGUN-TV already precludes the use of Channel 9 by any of the stations reviewed in this analysis and the adjacent channels are precluded by other nearby stations, the power increase proposed in the KGUN-TV application should not impact the repacking options for any other stations. As a result, protecting the facilities proposed in the KGUN-TV application in the incentive auction/repacking process shouldn't have any adverse impact on the repacking process.

TABLE 1.0
STATIONS INCLUDED
IN ANALYSIS
Journal Broadcast Corporation
Tucson, AZ

<u>Station</u>	<u>Channel</u>	<u>Location</u>
K04QP-D	4	Casas Adobes, AZ
KAET	8	Phoenix, AZ
KSAZ-TV	10	Phoenix, AZ
KPNX	12	Mesa, AZ
KNXV-TV	15	Phoenix, AZ
KPHO-TV	17	Phoenix, AZ
KFTU-CD	18	Tucson, AZ
KTTU	19	Tucson, AZ
KPAZ-TV	20	Phoenix, AZ
KVOA	23	Tucson, AZ
KTVK	24	Phoenix, AZ
KMSB	25	Tucson, AZ
KUTP	26	Phoenix, AZ
KUAS-TV	28	Tucson, AZ
KUAT-TV	30	Tucson, AZ
KOLD-TV	32	Tucson, AZ
KTVW-DT	33	Phoenix, AZ
KFPH-CD	35	Phoenix, AZ
KFTU-DT	36	Douglas, AZ
KAZT-CD	36	Phoenix, AZ
KUVE-CA	38	Tucson, AZ

TABLE 1.0 (cont'd)

<u>Station</u>	<u>Channel</u>	<u>Location</u>
KTAZ	39	Phoenix, AZ
KHRR	40	Tucson, AZ
KPDF-CA	41	Phoenix, AZ
KUVE-CA	42	Tucson, AZ
KWBA-TV	44	Sierra Vista, AZ
KUVE-DT	46	Green Valley, AZ
KASW	49	Phoenix, AZ
KPPX-TV	51	Tolleson, AZ